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FORSYTHE INTERNATIONAL LTD.

v.

THE OWNERS OF THE SHIP OR VESSEL "AVRO VENTURE"

HIGH COURT SINGAPORE

TS SINNATHURAY J

b

[ADMIRALTY IN REM NO. 293 OF 1984]

20 AUGUST 1986

SHIPPING: *Arrest of Ship - Unconditional appearance by defendants - Application under s. 4 of the High Court (Admiralty Jurisdiction) Act for dismissal of action.*

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The plaintiffs filed claim for US\$59,819.45 owing from the defendants and had the vessel "Avro Venture" arrested. The ship was released at the instance of the defendants producing a banker's guarantee. Subsequently the defendants took out an application for the action to be struck out and/or dismissed and for the delivery up and cancellation of the banker's guarantee on the ground that the admiralty jurisdiction of the Court under s. 4 of the High Court (Admiralty Jurisdiction) Act could not be invoked against the defendants. The application was dismissed by the Deputy Registrar.

*d***Held:***e*

The defendants had entered unconditional appearance and could not at this stage of the proceedings have the plaintiffs action struck out for want of jurisdiction. If the defendants wished to question the jurisdiction of the Court to hear the action they should have entered conditional appearance. Under the Rules of Court a defendant who objects to an irregularity in the writ of summons or the service of the writ or to jurisdiction must, if he wants to raise the ground, enter conditional appearance. The defendants were at liberty to raise the issue of jurisdiction in limine.

[Appeal dismissed.]

*f***Case referred to:***Bilbao [1860] Lush 149***Legislation referred to:**

High Court (Admiralty Jurisdiction) Act [Sing], s. 4

JUDGMENT*g***TS Sinnathuray J:**

The plaintiff's claim in this action, Admiralty In Rem No. 293 of 1984, is for the sum of US\$59,819.45 for bankers supplied to the defendant's ship "Avro Venture" in the months of November 1983 and January 1984 for her operation or maintenance at the ports of Colombo (Sri Lanka) and Masan (Panama), at the request of the defendants, their servants or agents. The plaintiffs arrested the "Avro Venture" in Singapore on 19 May 1984 and the ship was released at the instance of the defendants producing a banker's guarantee.

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On 22 November 1984 the defendants took out an application for the action to be struck out and/or dismissed and for the delivery up and cancellation of the banker's guarantee on the ground that the admiralty jurisdiction of this Court under s. 4 of the High Court (Admiralty Jurisdiction) Act (Cap 6) ("the Act") cannot be invoked against the defendants. On appeal, I also dismissed the application with costs and refused stay of execution.

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I dealt with the appeal on the narrow and fundamental procedural ground raised by the plaintiffs that as the defendants had entered unconditional appearance, they cannot, at this stage of the proceedings, have the plaintiffs action struck out for want of jurisdiction. I accepted the submission for the plaintiffs that if the defendants wanted to question the jurisdiction of the Court to hear this action, they ought to have entered conditional appearance.

Mr. Kuek for the defendants submitted that the plaintiffs had raised a technical objection only. He urged upon me that as the issue of jurisdiction can be raised in limine, though the defendants had entered unconditional appearance, under the inherent jurisdiction, I can set aside the proceedings which, according to him, must fail on the issue of jurisdiction. He conceded, however, that he had no case to support him. In the alternative, he asked for leave to withdraw the unconditional appearance.

On the authorities cited to me, in giving my decision, I said that the case of *Bilboa* [1860] Lush 149 was most relevant. In that case, the plaintiffs commenced an action and arrested the vessel “Bilboa”. The defendants entered unconditional appearance but later raised a plea which went to jurisdiction. It is against that plea that Dr. Lushington in dealing with the application said that although the objection was technical.

... I am of the opinion that an objection of this kind comes too late. The defendants have given an absolute appearance to the action: and after that they cannot be allowed to take a mere formal objection to the jurisdiction. It is true that the Court has occasionally considered questions of jurisdiction at the hearing, but always with great reluctance, and only where there might be danger of the Court proceeding without any jurisdiction at all. The Court is necessarily obliged to be careful not to exceed its jurisdiction; but it will not admit, after absolute appearance, objection of a purely technical kind. To do so might be to do great injustice; for the plaintiffs relying upon the absolute appearance, have allowed the defendant’s vessel to be released on bail. This plea must be struck out.

The case, to my mind, reinforces that under the Rules of Court a defendant who objects to an irregularity in the writ of summons or the service of the writ or to jurisdiction must, if he wants to raise the ground, enter conditional appearance. In the present case, the defendants are, of course, at liberty to raise the issue of jurisdiction in limine. They may raise it as a defence to the action. And, they can have the issue determined first as a preliminary issue. But, as they had entered unconditional appearance, they may not raise it now at this stage of the proceedings.

It was agreed between the parties that the decision in the above action would also apply to the appeal in Admiralty In Rem No. 321 of 1984. Accordingly, the appeal against the Deputy Registrar’s decision in that action was also dismissed with costs with no stay of execution.

Also found at [1988] 2 CLJ 583

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